

WAITANGI TRIBUNAL

Wai 1177

CONCERNING

the Treaty of Waitangi Act
1975

AND

a claim by Whatarangi Winiata
in respect of polling booths at
the Te Tai Hauāuru by-
election

INTERIM REPORT OF WAITANGI TRIBUNAL ON THE TE TAI HAUĀURU BY-ELECTION

The Registrar will please enter this matter on the Register of claims and give it the next available Wai number. The Register should note that the claim was received on 7 July 2004.

The claim is lodged by Whatarangi Winiata on behalf of registered Māori voters in the electorate of Te Tai Hauāuru, both for himself and in his capacity as interim president of the Māori Party. Broadly, the claim concerns the polling arrangements made by the Electoral Commission in preparation for the by-election taking place in the Te Tai Hauāuru electorate on 10 July 2004. Given that the by-election is so imminent, we agreed to hear the claimants and Crown on an urgent basis on the afternoon of the 7th and the morning of the 8th of July. As matters transpired, we either heard the matter then, or it would be too late.

Given the urgency of the matter, the evidence we heard was not detailed. We were left with no more than an impression of the relevant facts. In the time available that was all that was possible. We heard enough however to come to a view on whether the allegations made were suggested in the evidence.

1. The Claim

The essence of the claimant's claim was set out in his letter to the Electoral Commission of 5 July 2004. He complained that the number of polling places provided by the Electoral Office in the Tai Hauāuru electorate in the 2002 election was 406. The number of polling places for the 2004 by-election was 100. The effect was (because five new polling places were to be provided) that 311 polling places that were available in 2002 would not be available in 2004 – a reduction of more than 75%. Crucially the claimant argued 52% of the total number of votes cast in the Tai Hauāuru electorate in 2002 had been cast at one of the 311 places which would not be available. This the claimant argued was to be contrasted with the number of polling places operated for the Taranaki – King Country by-election in 1998. That electorate is roughly a third

the size of the Tai Hauāuru electorate, the number of registered electors was roughly comparable, but there, 110 polling places were provided.

Thus the claimant argued that Māori voters in the Tai Hauāuru electorate in the 2004 by-election would not receive fair and equal treatment when compared either with the position which obtained in the 2002 election or with the allocation of resources to a by-election in 1998 where that electorate was only a third the size of Te Tai Hauāuru.

The claimant emphasised continually that the allocation of resources to Māori voting in this by-election was not reasonable, honourable or in good faith. His starting position was that the Crown should provide the same number of polling places in 2004 which it provided in 2002 – that is 406.

2. The Crown's Reply

In a letter dated 6 July 2004 the Chief Electoral Officer Mr David Henry replied to the claimant's allegations. He argued firstly that the position in respect of the 2002 General election was not comparable with the 2004 by-election. He said that the Crown was able to provide 406 polling places in 2002 because those polling places serviced both general electorate voters and Māori electorate voters. They serviced a voting population of 300,000. Since the registered electoral population of the Tai Hauāuru electorate alone is only 26,000, Mr Henry argued that providing 406 polling places would prove unreasonably expensive.

Instead, the Chief Electoral Office took a more measured approach. Mr Henry explained:

“Our overall objective in determining the number and location of polling places for the by-election was to provide a good service to voters. This objective had to be balanced with the requirement to expend public monies prudently.

The Returning Officer was accordingly asked to review the polling places used at the 2002 General election against the following guiding principles. The starting point was that voters should receive, where possible, the same level of access to voting services that they received at the General election. However, it was recognised that regard has to be paid to the costs of providing physical voting facilities for a maximum of 26,000 voters spread over a large geographic area.

Therefore, polling places that took 20 or more Māori votes at the 2002 General election were to be used unless they could be readily amalgamated with another polling place close by. This meant that in cities and towns polling places could be readily amalgamated so that they were servicing a reasonable number of voters. In remote areas the Returning Officer was asked to consider leaving open polling places that took 10 or more votes unless another polling places was close by. Advance voting and postal voting services were also to be made available.

The Returning Officer applied these principles and recommended the appointment of 100 polling places. In making his recommendations the Returning Officer identified the expected number of votes for each polling place. The Chief Electoral Office's planning assumption in preparing for this by-election is that the same number of electors that voted at the General election will vote at the by-election (that is, a 58% turnout). The Chief Electoral Office reviewed the recommendations against this assumption and was satisfied that the proposed polling places would comfortably manage a turnout of this size. I appointed the polling places on this basis. I am happy to provide you with the detailed calculations upon which this decision was based if you wish.”

3. Nineteen Extra Polling Places?

The claimant then through Mr Gerard Hehir, assessed the formula applied by the Chief Electoral Office as set out in the third paragraph of Mr Henry's letter. He identified three additional polling places in non-remote areas which took 20 or more Māori votes in 2002 but could not be readily amalgamated with another polling place close by. They were

- Foxton Beach (37 votes, 6km away from nearest 2004 polling place)
- Ohau (27 votes, 5km away from nearest 2004 polling place)
- Waitarere Beach (21 votes, 15km away from nearest 2004 polling place)

In addition Mr Hehir's assessment identified 16 localities that received more than 10 ordinary votes in 2002 (in accordance with the Chief Electoral Office's remote area formula) and were more than 5km away from the nearest polling place in 2004. Eight of them according to Mr Hehir were in fact more than 10kms from such a place. The 16 places were:

- Manakau
- Tangimoana
- Moawhango
- Himatangi Beach
- Waitarere Beach
- Ngakonui
- Tokomaru
- Kaponga
- Cheltenham
- Ihakara
- Oaonui
- Whakamaru
- Bunnythorpe
- Okaiawa
- Ohawe Beach
- Foxton Beach
- Sanson
- Newbury
- Ohau

Having undertaken that analysis, the claimant asked the Chief Electoral Officer to reconsider the allocation of polling places with a view to increasing them. On 6 July Mr Henry replied that he remained of the view that the number and location of polling places together with the availability of postal voting and advance voting would provide "a good service to voters". There the matter stood until it came before us on the afternoon of the 7th of July.

While the claimant adopted the formal position that 406 polling places should be provided he acknowledged the resourcing implications of that stand and readily accepted when he appeared before us that if Mr Henry applied the Chief Electoral Office's formula in a manner consistent with the claimant's

assessment, he would be satisfied that a reasonable compromise had been reached. The effect of this would be that 19 further polling places would be provided for the upcoming by-election.

4. Comparabilities

On the morning of 8 July the Chief Electoral Officer and Mr Robert Peden attended a further hearing and provided us with comparative data. In particular we were provided with a table entitled "Polling Place Averages of Electors and Voters 1998/2004". This table compared electorate size, average electors per polling place and average voters per polling place in the Taranaki/King Country by-election of 1998, that electorate in the 2002 General election together with West Coast Tasman, East Coast and Te Tai Hauāuru. We have attached the table to this interim report for ease of reference. In essence the table suggested that the Tai Hauāuru electorate was better served than all of the other electorates referred to in terms both of average electors and voters per polling place.

Of particular interest were the figures for West Coast Tasman, an electorate larger than Te Tai Hauāuru.¹ Notwithstanding its greater area, Mr Henry argued that the 112 polling places provided there had to serve a greater proportion of both registered voters and actual electors in the electorate. In other words, it was suggested, the level of service provided by the Chief Electoral Office in the West Coast General election was not as good as that to be provided in Te Tai Hauāuru on the 10th of July. It could not therefore be argued that Te Tai Hauāuru voters were being discriminated against. All large electorates had the same problem and all required some compromise in terms of service provision to voters.

5. Our View

If the transfer of kāwanatanga in 1840 provided any benefit at all to Māori, it was that it presaged the arrival of the franchise in the 1867 Māori Representation Act. The ability of Māori to participate in, and influence representative government in New Zealand has been an important element of Crown/Māori relations from the earliest times. There is no question therefore, but that the provision of polling places in a by-election in a Māori electorate is a Treaty issue. In particular we think that it is a matter to be considered in the context of the clear promise in Article 3 that Māori would not be discriminated against on the basis of their race. This must include a right not to be discriminated against when participating in the process by which the kāwanatanga is chosen. There must be no room for the inference that Māori votes have less value than non-Māori votes.

The approach taken in principle by the Electoral Office appears to us to be sound – that is to provide "a good service to voters" within reasonable funding constraints.

We are mindful of course that this assessment occurs in a broader context. The first element in this context is that Māori electoral participation is extremely low.

¹ 3.7 million hectares as compared with 3.0 million for Te Tai Hauāuru

Only 58% of Māori voters registered in the Tai Hauāuru actually voted in the 2002 election. This compares with an average voter turn out across all general electorates of 78.5% in the same election. It is unarguable in light of these facts that the Crown should take special steps to encourage Māori participation in the electoral system, including providing sufficient polling places for Māori electors to vote with reasonable convenience.

The second element for consideration is the size of the Tai Hauāuru electorate. The greater the area, the less able the Chief Electoral Office is to provide reasonable convenience to voters for the same budget as that for smaller, more urban electorates. It must be the case that larger electorates require greater resources in order to make the franchise meaningful on election day. Mr Henry's figures invite the conclusion that Te Tai Hauāuru is receiving better treatment than comparable large electorates. But figures can be deceiving. The greater average figure for electors and voters per polling place in the West Coast does not necessarily mean that Te Tai Hauāuru is better served. It may simply mean that the West Coast is more densely populated² or that, as the claimant suggested, the West Coast population is more concentrated in particular areas because of the high proportion of uninhabited Crown land in that electorate. Thus while it is too simplistic to suggest that the Te Tai Hauāuru electorate receives materially better treatment than comparable general electorates, we are not convinced either, on the evidence, that there is significant discrimination against Te Tai Hauāuru voters. It may be that if we were provided with figures for other large general electorates such as Clutha or the Far North, it would become clear that the West Coast is an example of extremely poor provision and should not be treated as a benchmark for resourcing large Māori electorates. But we did not have that material before us and we are therefore not prepared to speculate on a matter of such importance.

Having said that we were struck by the indication from Mr Henry that the provision of an additional 19 polling places as sought in the end by the claimant, would cost about \$20,000. In light of the \$500,000 being spent on the by-election, that is a modest additional sum – about 4% of the total. Accordingly, while we are not prepared to find that the claim is well founded, this is because the evidence adduced by the claimants was insufficient to make out their case. It was not because we were convinced that the Crown is doing enough. The list of 19 additional polling places did include several examples where, if they were not provided, the distance necessary for voters to travel remained a matter for real concern to us. This was particularly so given that the number of Māori without access to a vehicle is, on average, twice that for non Māori.


In the end we are not prepared to make any formal recommendation on the basis of the evidence before us, but, in light of the distressingly low voter turn out in Te Tai Hauāuru in 2002, and of the concerns we have expressed about distances from polling places, the Chief Electoral Officer may wish to reconsider his stance with respect to the 19 polling places to which we have made reference.

² 38,270 electors and 30,317 voters in the West Coast as against 25,761 and 14,941 in Te Tai Hauāuru

The Registrar is urgently to send a copy of this interim report to the claimant and the following:

David Henry, Chief Electoral Officer
Helena Catt, Chief Executive, Electoral Commission
Hon Margaret Wilson, Minister in Charge of Treaty Negotiations
Hon Parekura Horomia, Minister of Māori Affairs
Hon Phil Goff, Minister of Justice
Hon Rick Barker, Associate Minister of Justice
Solicitor General, Crown Law Office
Virginia Hardy, Crown Law Office

DATED at Wellington this  day of July 2004


Chief Judge J V Williams, Chairperson on behalf of the Tribunal comprising himself, John Clarke and Dame Margaret Bazley